

Walter Bunbury, Esq; and Dame Elizabeth
Irwin, *his Wife* - - - - - } *Appellants.*

Thomas Bolton, one of the Aldermen of
the City of Dublin, The Reverend Dr.
John Bolton, Dean of Derry, and
Charles Bladen, and Letice his Wife - } *Respondents.*

The Respondents CASE.

Mortgaged to the
Hospital, 1671.

DUDLEY LOFTUS, Esquire, Doctor of Laws, in the Year 1671, being seized in Fee of several Houses, on the *Blind Key, Smock Alley, and Scarlet Lane*, in the City of *Dublin*, mortgaged the same unto the Governors of the *Blue-Coat Hospital* near *Dublin*, for the principal Sum of 800*l.* and Interest for the same, at 10*l.* per Cent. per Annum, and a great Arrear of the said Interest being due in the Year 1694, the said Mortgagees recovered the Possession of all the said Mortgaged Premises (except a House the said Doctor then lived in.)

ON or a about the 5th Day of April 1695, the said Dr. Loftus made his Last Will and Testament in Writing, and thereby bequeathed, *inter alia*, unto his Wife the now Appellant Lady Irwin (in Case she survived him) the Brick House wherein he then dwelt, with his Court, Garden, and Stable thereunto adjoining, as also all the Furniture of the said House, together with One Third part of the Profits of all the other aforesaid Houses, reserving out of the said Brick House (so devised as aforesaid) a Room, to each of his two Daughters (*Jane* and *Letice*) as at the Time of his Death should be furnished; with Closets to each of them belonging; and also bequeathed unto his said Wife, One Third part of all other his Personal Estate; and also bequeathed unto his said Wife, and the Respondent Dean Bolton, the other Two Thirds, of all his real and personal Estate, in Trust for the said *Jane* and *Letice*, their Heirs, Executors and Administrators: And if his said Wife should marry after his Death, then from and after such Marriage, he directed, that the whole entire Trust of the said Two Thirds of his said real and personal Estate, should remain to the said Doctor Bolton, as if his said Wife were naturally Dead, and appointed the Appellant his said Wife, and the Respondent Dean Bolton, Executors of his said Will, and soon after Died, and the said Executors proved the said Will.

THE Appellant the said Lady Irwin, continued in the Possession of the said House, for some Time under the said Will, and possessed herself of the most part of the Doctor's Personal Estate, and disposed of the same to her own use; and she soon afterwards, *viz.* the 14th of April, 1696. Intermarried with one Robert Mac-Neal.

By Indenture of Lease, bearing Date the 20th of January, 1696, the said Robert Mac-Neal, and the Appellant Lady Irwin, did Demise the said House, Garden, and Stables, &c. To Thomas Milburne, for the Term of 21 Years, at the Yearly Rent of 55*l.* and the said Milburne, by virtue of the said Lease, entered into the said Premises, and turned the said House into a Tavern, which was afterwards known by the Name of the *One Tun Tavern*; by means whereof the Doctor's said Daughters were obliged to quit their Rooms and Closets devised to them, in the said House, for their Habitations, and the said Mac-Neal, in right of his Wife the Appellant Lady Irwin, received the said Rent of 55*l.* per Annum, from the said Milburne, until the Year 1702. although during the Time that he received the said Rent, the said House was subject to the aforesaid Mortgage.

In the Year 1696. some Differences arising between the said Daughters of Doctor Loftus, and the Appellant Lady Irwin, and her Husband Mac-Neal, concerning their several Interests in the said Mortgaged Premises, they agreed to refer the same to Mr. John Smith, and Mr. Samuel Martin, who made and published their Award, whereby they ordered the Daughters of the said Doctor Loftus to pay 300*l.* to the Appellant Lady Irwin, in full of her Interest in the said Mortgaged Premises; and the Appellant Lady Irwin, and the said Robert Mac-Neal, her then Husband, knowing that after Payment of the Mortgage Money, due to the Governors of the *Blue-Coat Hospital*, their Demands would be of little Value, were so well satisfied with the said Award, that in their Answer, to a Bill filed against them by the said Daughters, in the Year 1698. they insisted on the said Award, and prayed, that all Benefit and Advantage accruing to them by the said Award, might be reserved to them.

THE said Mortgagees finding that such part of the Premises, as they had first possessed themselves of, was not sufficient to discharge the growing Annual Interest, much less discharge the Arrear of Interest, in the Year 1702. brought an Ejectment, for Recovery of the said

faid Brick House and Premises, which were set to *Milburne*, which they upon such Ejectment recovered, and were afterwards put into the Possession thereof.

T H E said *Appellant Lady Irwin*, and the said Daughters of the said Doctor *Loftus*, finding that they could not get any thing out of the said Premises until the Principal, Interest and Costs due on the said Mortgage were fully satisfied and paid, they did propose to sell the said Premises to the Governors of the said *Hospital*, and to several others, for 2000*l.* in which Sum the Principal, Interest and Costs due on the said Mortgage, were to be included; who refused to give so much, thinking it to be too dear a Bargain, and the *Appellant Lady Irwin* offered the Premises to Sale for less, but no Person would buy the same, the Building thereon being very old and of little Value; and soon after the *Appellant Lady Irwin*, and her said Husband *Mac-Neal*, went into *England*, without making any Agreement about the said Premises, not finding at that time any one that would purchase the same.

T H E *Respondent Alderman Bolton*, on or about the Year 1704. came to an Agreement with the said Daughters, to give 2100*l.* for the said Mortgaged Premises, to be paid in manner following; viz. To the Governors of the *Hospital*, the Sum of 900*l.* which then appeared to be due to them upon account of the aforesaid Mortgage; 900*l.* to the *Respondent Dean Bolton*, in Trust for the said Daughters; and 300*l.* to remain in the *Respondent Alderman Bolton's Hands*, to satisfy the *Appellant Lady Irwin* her Demands, which was what the *Appellant Lady Irwin*, and her Husband, had claimed for her Interest in the said Premises, and what was adjudged to be the Value thereof, in regard she had only an Estate for Life, after the Mortgage was discharged, and not being in the Receipt of One Penny out of the Premises, at that Time.

Conveyance to
Bolton, 26 & 27
January, 1704.

A N D in pursuance of the aforesaid Agreement, the said Daughters of the said Dr. *Loftus*, and the *Respondent Dean Bolton*, as their Trustee, by Deeds of Lease and Release bearing Date respectively the 26th and 27th Days of *January*, 1704. in Consideration of the Sum of 900*l.* paid to the said *Respondent Dean Bolton*, for the use of the said Daughters, and of 1200*l.* to be paid and detained as aforesaid, did Convey and Assure to the *Respondent Alderman Bolton*, and his Heirs, all their Estate, Right and Title, to the said Premises.

T H E *Respondent Alderman Bolton*, on or about the 10th Day of *May*, 1706. came to an Account with the Governors of the said *Hospital*, and there then appeared to be due on the Mortgage for Principal, Interest and Costs, the Sum of 805*l.* 15*s.* 2*d.* and no more, they having since the *Respondent Alderman Bolton's* said Purchase, received several Sums of Money out of the said Premises; whereupon the said Governors of the said *Hospital*, by Deeds of Lease and Release, bearing Date respectively the 9th and 10th Days of *May*, 1706. in Consideration of the Sum of 805*l.* 15*s.* 2*d.* paid unto them by the *Respondent Alderman Bolton*, did assign the aforesaid Mortgage to one *Richard Weldon*, in trust for the *Respondent Alderman Bolton*, and in pursuance of the said Assignment, the said *Respondent Alderman Bolton*, became possessed of all the aforesaid Mortgaged Premises, which as they were at that Time set, did yield about 120*l.* per Annum.

T H E said Premises being in a very ruinous and old Condition, and the Expences the *Respondent Alderman Bolton*, was constantly at in repairing the same, amounted to very considerable Sums, so that the Yearly Income of the said Premises, did not answer the Interest of his Purchase-Money; and finding that no Tenant would improve on the Premises, or advance his Yearly Rent for a short Term, and that unless the said Premises were rebuilt, the same would in a very few Years be of little or no Value; he the said *Respondent Alderman Bolton*, finding the Premises so ruinous and in Decay, was obliged to set such part of the Premises as were unset, to several Tenants for long Terms of Years, who were obliged to rebuild the said Houses, and who have laid out great Sums of Money in rebuilding the said Houses, and made use of the old Materials in the New Buildings, so that the Premises, by the Improvements made upon them, now yield 166*l.* per Annum.

Bill filed 11
Novem. 1710.

T H E *Appellant Lady Irwin* being fully acquainted with all Proceedings of the *Respondent Alderman Bolton*, in relation to his Purchasing from the said Daughters their Right and Interest, and the Assignment of the Mortgage by the Governors of the *Hospital*, seemed very well satisfied thereat, and proposed the referring her Demand out of the Premises, to the Arbitration of the *Respondent Dean Bolton*, or any other Disinterested Person; but she not returning into *Ireland* until *June*, 1710. and perceiving by the *Alderman's* Management, that the Premises were in a flourishing Condition, and of much greater Value than when he first purchased the same, she the said *Appellant Lady Irwin*, and her then Husband *William Broughton Esquire*, on the 11th of *November*, 1710. did Exhibit their Bill in the High Court of Chancery in *Ireland*, against the now *Respondents* and others, and thereby insisted on having an Account, and the Possession of the Houses which were built on the House and Gardens particularly devised to her, and also to have the Possession of one Third Part of the Houses built on the rest of the Premises.

Answer, 17 April,
1711.

T H E *Respondents*, and the other *Defendants* to the said Bill, on the 17th Day of *April*, 1711. having put in their several Answers to the said Bill, the said *Respondent Alderman Bolton* by his said Answer insisted on the said several Transactions, and his Right and Title to the said Premises as before mentioned, and the said Cause being at Issue, and Witnesses being Examined, and Publication being passed;

Hearing and De-
cree, 21st Nov.
1716.

O N the 21st Day of *November*, 1716. the said Cause was heard before the Right Honourable the Lord Chancellor of *Ireland*, when his Lordship was pleased to Order and Decree (*inter alia*) That the *Appellant Lady Irwin* should recover from the *Respondent Alderman Bolton*, the House called the *One Tun*, with the Garden, Stables, and Appurtenances thereto belonging, and that so much of the Premises as were set to *Milburne*, should

Should be accounted for at 55 l. per Annum during *Milburne's* Lease, and after the Expiration thereof, that the *Appellant* should have, during her Natural Life, the Rents thereof, as now set by the *Respondent* Alderman *Bolton*, and a 3d Part of the rest of the real Estate during her Natural Life, as the same is now set by the *Respondent* Alderman *Bolton*, subject to a 5th Part of the Mortgage assigned by the *Blue-Coat Hospital* to the *Respondent* Alderman *Bolton*; and that the Fines received by the *Respondent* Alderman *Bolton* from the Tenants, should go towards Discharge of the Incumbrances by him paid as aforesaid; but the said Decree was not to affect the Leases made by the *Respondent* Alderman *Bolton* to the Tenants of the Premises. And it was further Decreed, that the *Respondent* Alderman *Bolton*, should have an Allowance for the Two Rooms and Closets devised by the Doctor's Will to his said two Daughters, in Case they had not Satisfaction for the same; and it was thereby referred to *George Warburton*, Esquire, one of the Masters of the said Court, to state and settle an Account between the *Appellants* and *Respondents*, and the said Master was Armed with a Commission to examine Witnesses touching the said Account.

Decree Enrolled by Appellants. THE *Respondent* Alderman *Bolton* apprehending himself to be aggrieved by some Part of the said Decree, before he could petition for a Rehearing of the said Cause, the *Appellant* Lady *Irwin* Enrolled the said Decree, then looking on the same to be pronounced in her Favour, and hath since the Enrollment of the said Decree, receiv'd from the *Respondent* Alderman *Bolton* upwards of 500 l. in Part Performance of the said Decree.

THE *Appellant*, after more than 5 Years Acquiescence under the said Decree, and having received so Considerable a Sum on account of the said Decree, hath thought fit to Appeal against the said Decree; and in the Appeal hath mentioned the following Objections as the Ground of it :

Object. 1. FOR that the said Decree directs, that the House and so much of the Premises as were set to *Milburne*, be accounted for at 55 l. per Annum during the said *Milburne's* Lease, whereas the Court ought to have directed the *Respondent* to account at the rate of 60 l. per Annum for the same, *Milburne* paying 5 l. per Annum for one Part, and 55 l. for another.

Answer. THAT it does not appear by any Proof in the Cause, That the said *Milburne* paid 5 l. per Annum for one Part, and 55 l. for another, but it manifestly appears by the said Lease he only paid 55 l. per Annum.

Object. 2. THAT after the said *Milburne's* Lease, the *Appellant* is only Decreed to the Rent thereof, as now set by the *Respondent* Alderman *Bolton*, whereas she should have been Decreed to the entire Possession of the Premises.

Object. 3. FOR that as to the Third Part of the rest of the real Estate, the *Appellant* is only Decreed to the Rent thereof, as now set by the *Respondent* Alderman *Bolton*, whereas the *Appellant* should also have been Decreed to the Entire Possession of the said Third Part.

Answer to 2d and 3d Object. THAT it is humbly apprehended, That the *Appellant* Lady *Irwin* could have no more then the Rent of the House during *Milburne's* Lease, and had not the *Respondent* Alderman *Bolton*, who was Assignee of the Mortgagee, managed in the Manner before mentioned, in setting all the Mortgaged Premises to improving Tenants for long Terms of Years, the Houses and other the Premises running to decay, would not have yielded more than the Interest of the Mortgage, and then the *Appellant* could not have received any Thing thereout; and it is plain the *Respondent* Alderman *Bolton* was under a Necessity of making such Leases of the Premises, otherwise the said Mortgage would not yet have been Discharged, and the *Appellant* is in a much better Condition thereby.

Object. 4. FOR that the Fines which were taken by the *Respondent* Alderman *Bolton*, and which are directed to be applied to the Mortgagee, were chiefly taken out of the *Appellant's* Estate for Life, whereby the *Appellant's* Life Interest is unequally charged.

Answer. THE *Respondent* Alderman *Bolton* took no Fines out of the Premises demised to *Milburne*, but what Fines he took were out of the rest of the real Estate, wherein the *Appellant* is only Interested in one 3d Part; And, therefore, her Interest could in no respect be lessened thereby, in regard she is to pay one 5th Part of the Mortgage, and consequently could only be Intituled to one Fifth Part of the Fines.

Object. 5. FOR that there is not any Direction given by the said Decree, that the *Appellant* Lady *Irwin* shall have Interest for the Money coming to her from the *Respondent* Alderman *Bolton*, while the same lay in his Hands.

Answer. THAT it was not insisted on at the Hearing of this Cause, that the *Respondent* Alderman *Bolton* should pay the said *Appellant* Interest, neither did the Court see any Reason for directing Interest; the *Respondent* Alderman *Bolton* being always ready to pay what in Justice the said *Appellant* Lady *Irwin* was intituled unto, and in reality did advance and pay her several Sums of Money before any became due to her.

Object. 6. FOR that the *Respondents* are not obliged by the said Decree, to produce before the Master on Oath all Deeds, Writings and Accounts in their Custody, without which the Account cannot be fairly adjusted.

Answer. THAT all the Deeds, Writings and Accounts are proved in the Cause, and, therefore, of Course must be produced before the Master, and if there was any such Defect in the Decree the Court would have Aided it upon a Motion.

Object. 7. FOR that the said Court ought to have Decreed, That the *Respondent* Alderman *Bolton* should be Examined on Personal Interrogatories, touching what he paid on Account of the aforesaid Mortgage; and the rather, for that the Mortgagee was in Receipt of the Rents for above 10 Years before the Assignment to the *Respondent* Alderman *Bolton*, and that Costs ought to have been Decreed to the *Appellants*.

THAT

Answer.

THAT it was not insisted upon at the Hearing by the *Appellant*, and if the Court should see any Reason for it, the *Appellants* might have had it supplied by a Motion. And it is proved in the Cause, That the *Respondent* Alderman Bolton paid 805 *l.* 15 *s.* 2 *d.* to the Governors of the Hospital, which Sum appeared to be then due on the Mortgage; and the Account was approved of by the Daughters, and the *Respondent* Dean Bolton. And as to Costs, considering how fair the *Respondents* have acted, it was not reasonable that Costs should be Decreed against them; and the rather, because the *Respondent* Alderman Bolton, stood in the Place of a Mortgagee, as well as a Purchaser of the Reversion; and since the *Appellant* Enrolled the said Decree, and Acquiesced under the same for 5 Years, and hath received upwards of 500 *l.* under the said Decree; and in regard the *Appellant* would not under her Uncertain Estate, for her Life, have ever been able to have reaped any Benefit from the Premises in Question, without the Method taken by the *Respondent* Alderman Bolton for improving the Premises;

THE Respondents humbly hope, that for these, among many other Reasons, the said Decree shall be Affirmed, and that the said Appeal shall be Dismissed with Costs.

THO. LUTWYCHE.

SAM. MEAD.

Walter Bunbury Esq; }
and Lady Irwin } Appellants.
Thomas Bolton, Esq; } Respondents.
The Respondents CASE.
To be Heard at the Bar of the House of
Lords on the 24 Day of
November, 1721.

Affirmed 10. 40 Costs